

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

VITEK RECOVERY ENTERPRISES, LLC,

Plaintiff,

vs.

Case No. 2014-652-CK

UUSI, LLC, d/b/a NARTRON and/or NARTRON
CORPORATION,

Defendant,

and

UUSI, LLC, d/b/a NARTON,

Counter-Plaintiff,

vs.

VITEK RECOVERY ENTERPRISES, LLC,

Counter-Defendant,

and

VITEK TECHNOLOGY CO, LTD,

Third-Party Defendant.

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OPINION AND ORDER

Defendant/Counter-Plaintiff UUSI, d/b/a Nartron and/or Nartron Corporation (“Defendant”) has filed a motion for issuance of a second summons with respect to Third-Party Defendant Vitek Technology Co, Ltd. (“Vitek Tech”). Plaintiff/Counter-Defendant Vitek Recovery Enterprises, LLC (“Plaintiff”) has filed a response and requests that the motion be denied.

Facts and Procedural History

In this matter, Plaintiff and Defendant have pled competing breach of contract claims arising from certain purchase orders submitted pursuant to a contract between Vitek Tech and Defendant (the “Contract”). On July 9, 2013, Vitek Tech allegedly terminated the Contract.

Vitek Tech is a foreign corporation whose primary offices are located in China. Defendant is a Michigan limited liability company. Plaintiff was formed on October 10, 2013. Defendant alleges that Plaintiff was formed as a subsidiary of Vitek Tech for the purpose of pursuing Vitek Tech’s claims against Defendant.

On October 14, 2013, Vitek Tech assigned, transferred and conveyed all right, title and interest in all claims it may have against Defendant to Plaintiff. On October 15, 2013, Plaintiff filed its complaint in this matter.

On March 17, 2014, Defendant filed its counter-complaint. Defendant’s counter-complaint consisted of a single breach of contract claim arising out of Vitek Tech’s alleged breach of the Contract. On June 2, 2014, after receiving leave from this Court, Defendant filed its first amended counter-complaint which include a claim for piercing the corporate veil against Plaintiff.

On August 6, 2014, the Court held a status conference. At the conclusion of the conference, the Court entered an order permitting Defendant to file a second amended complaint adding Vitek Tech as a third-party defendant. On November 3, 2014, Defendant filed its second amended complaint and third party complaint adding Vitek Tech as a party, as well as adding additional claims against Plaintiff and Vitek Tech. On November 5, 2014, an original summons directed to Vitek Tech was issued.

On January 19, 2015, Defendant filed its instant motion for issuance of a second summons for Vitek Tech. On January 23, 2014, Plaintiff filed its response requesting the motion be denied. On January 26, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

Standard of Review

“A summons expires 91 days after the date the complaint is filed.” MCR 2.102(D). “However, within those 91 days, on a showing of due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed.” *Id.* “On the expiration of the summons as provided in subrule (D), the action is deemed dismissed without prejudice as to a defendant who has not been served with process as provided in these rules, unless the defendant has submitted to the court’s jurisdiction.” MCR 2.102(E)(1).

Arguments and Analysis

The burden of establishing due diligence rests on the party seeking a second summons. *Bush v Beemer*, 224 Mich App 457, 464; 569 NW2d 636 (2004). In support of its motion, Defendant has provided the affidavit of Raechel M. Badalamenti, Esq., its counsel. Ms. Badalamenti has testified that her firm has consulted with firm able to effectuate service on Vitek Tech, and has been advised that it will take approximately 6 months to complete service. Ms. Badalamenti has also advised the Court that her firm has retained a firm to translate and serve the pleadings. In addition, the Court notes that Defendant’s efforts have been complicated by the need to participate in several status conferences over the last few months. Based on Defendant’s counsel’s efforts to retain a firm to complete the service of process in this matter, as well as the conferences and other events that have taken place in connection with this matter, the Court is

satisfied that Defendant has satisfied its burden of establishing due diligence. Consequently, Defendant's motion for the issuance of a second summonses will be granted.

Conclusion

For the reasons set forth above, Defendant/Counter-Plaintiff UUSI, d/b/a Nartron and/or Nartron Corporation's motion for issuance of a second summonses is GRANTED. Defendant may have a second summons issued, with an effective date of February 3, 2015. The second summons will expire on November 1, 2015. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: February 3, 2015

JCF/sr

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